



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2004

Mr. David Caylor
City Attorney
City of Irving
825 W. Irving Blvd.
Irving, Texas 75060

OR2004-7314

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 207855.

The City of Irving (the "city") received two requests from the same requestor for information relating to one of the city's seasonal employees. You claim that some of the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we note that the city has not complied with the requirements of section 552.301 of the Government Code in seeking this decision. Section 552.301 prescribes the procedures that a governmental body must follow when seeking to withhold requested information from public disclosure. Section 552.301 provides in part:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

Gov't Code § 552.301(a)-(b). In addition, within fifteen days of receiving the written request for information, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us that the city received the first request for information on April 13, 2004, and the second request for information on May 24, 2004. The city released some documents to the requestor in response to each of these requests. You acknowledge that the city redacted certain information from the documents it released to the requestor on the basis of section 552.117 without seeking a decision from this office. We note, however, that this office has not granted the city a previous determination to withhold requested information from disclosure under section 552.117. *See* Open Records Decision No. 673 (2001) (explaining circumstances under which attorney general decision can be considered previous determination under section 552.301(a)). Therefore, the city was required to request a decision from this office within ten business days of receiving each request for information and submit to this office the items required by section 552.301(e) within fifteen business days of receiving each request for information.

The city's failure to comply with section 552.301 results in the presumption that the information at issue is public. In order to overcome this presumption of openness, the city must provide compelling reasons why the information should not be disclosed. *See* Open Records Decision No. 150 (1977) (concluding that compelling reason exists when requested information is confidential by law or third party interests are at stake). Because the applicability of section 552.117 provides such a compelling reason, we will address the city's arguments against disclosure.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body, except as provided by section 552.024 of the Government Code. Section 552.024 provides in part:

- (a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing no later than the 14th day after the date on which:

- (1) the employee begins employment with the governmental body;
- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

Gov't Code § 552.024(a)-(d). You contend that the redacted information in the submitted documents should be protected by section 552.117(a)(1) regardless of when the information was requested or when the seasonal employee began her employment and elected confidentiality under section 552.024. However, this office has consistently held that the determination as to whether a particular piece of information is protected by section 552.117 must be made at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, if a selected applicant begins her employment with a governmental body and files an election to keep her home address and telephone number, social security number, and family member information confidential with the governmental body before this information is requested in a written request for information, the governmental body must withhold this information under section 552.117(a)(1). *See* Gov't Code §§ 552.024, .117. Likewise, if the governmental body receives a written request for this information within fourteen days after the date on which the selected applicant began her employment and the selected applicant has not elected to allow public access to this information as of the date of the written request for information, the governmental body must withhold the selected applicant's information from disclosure. *See id.* § 552.024(b), (d). However, if the selected applicant does not begin her employment until after the written request for information is made or the governmental body receives the request on or after the fifteenth day from the date the selected applicant begins employment and she has not yet elected to keep her information confidential under section 552.024, the selected applicant's information is not protected under section 552.117. *See id.* §§ 552.024, .117(a)(1). Based on your representations and the submitted information, we understand that the city received both requests for information prior to the time the seasonal employee began her employment

with the city. Therefore, information responsive to these requests is not protected by section 552.117 and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Hattaway", written in a cursive style.

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/krl

Ref: ID# 207855

Enc. Submitted documents

c: Dallas County Coalition for Family Safety
P.O. Box 154248
Irving, Texas 75015-4248
(w/o enclosures)